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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DPH HOLDINGS CORP., ET AL.,

Debtors.

- - - - -x

U.S. Bankruptcy Court
300 Quarropas Street
White Plains, New York

June 21, 2011
10:10 AM

B E F O R E:
HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

DPH HOLDINGS CORP., ET AL.

1 THE COURT: But if it's an order entered based upon a
2 representation that the people had been served, when in fact,
3 they hadn't been served. That's a real problem.

4 MR. KLEIN: I agree with you and let me address that.

5 THE COURT: Okay.

6 MR. KLEIN: Plain and -- I wasn't involved in the case
7 at the time, so I --

8 THE COURT: Right.

9 MR. KLEIN: Plainly, there was not an understanding,
10 and I could imagine very sensible reasons for thinking that the
11 notice language in the -- case management will likely know what
12 the exact name of the order is -- applied here. First, it
13 would be inherently -- expecting this sort of notice, would be
14 inherently inconsistent with the big picture series of orders
15 that were entered that provided for filing the cases under
16 seal, precisely to avoid creating the sorts of controversies
17 that would arise here. I mean, that was --

18 THE COURT: But that isn't -- that wasn't the basis
19 for the fourth extension.

20 MR. KLEIN: Well, but it's inextricably tied to put
21 it -- the cases under seal. You can't -- I mean, the whole
22 point of the extension was to continue the status quo where
23 complaints hadn't been served.

24 THE COURT: But did -- the point as stated in the
25 motion and in the oral presentation was that the debtor needed

DPH HOLDINGS CORP., ET AL.

1 a situation that other than through some miraculous
2 happenstance, no one could have --

3 THE COURT: I appreciate -- that's why I say there's a
4 spectrum here.

5 MR. KLEIN: Okay. Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. NAYAK: Your Honor, Mahesh Nayak again. I'm just
8 wanting to get clarification. You mentioned some time frames
9 that you would like to see this within --

10 THE COURT: Yes.

11 MR. NAYAK: -- and I also want to understand from Your
12 Honor how you view this should happen, whether it should be
13 part and parcel of the -- is this a predicate or a predecessor
14 to the debtors' motion for leave to amend that they can
15 affirmatively somehow establish that service was accomplished
16 to Your Honor's satisfaction, that we would oppose that, there
17 would be a hearing on it in advance of a motion for leave to
18 amend? Because it seems like a motion for leave to amend, Your
19 Honor --

20 THE COURT: That's a good question. I think it partly
21 depend -- I'm not sure there's a difference as far as burden is
22 concerned; if I treat this as step two of their leave to amend
23 or if I treat this as everyone's request for me to take another
24 look at the October order since ultimately the issue is -- I
25 think there's -- in each case, there's a fairly modest burden

DPH HOLDINGS CORP., ET AL.

1 on the debtor in either case. But maybe I'm wrong about that.

2 I mean, ultimately it is part of -- I think a 15
3 showing to me, ultimately, because it's the futility argument.
4 Rule 15 is -- you know, it's a fairly light burden, ultimately,
5 but -- and I think the futility point here goes back to
6 reconsideration of my order so again, there's some slight
7 burden on the debtor.

8 MR. NAYAK: Slight burden on the debtor with respect
9 to the --

10 THE COURT: Under either -- whether I do it under
11 either approach. But I guess it's probably best done as part
12 two of a Rule 15 motion.

13 UNIDENTIFIED SPEAKER: -- the timing, Your Honor?

14 THE COURT: Well, I think step one of this part two
15 would be the defendants' assertion of their facts as to notice
16 and step two of it would be the debtors' response.

17 UNIDENTIFIED SPEAKER: Understood.

18 MR. KLEIN: Your Honor, I assume this is only with
19 respect to defendants who have filed an affidavit as to filing
20 notice?

21 THE COURT: Have or will? I mean, we specifically
22 didn't make notice part of this hearing, so --

23 MR. KLEIN: Well, no but there's -- the relevant
24 motions were filed a year ago.

25 THE COURT: Oh, you don't have to refile one -- you

DPH HOLDINGS CORP., ET AL.

1 THE COURT: No. No, I don't think so because again --
2 and I appreciate that counsel for Doshi and other counsel may
3 have reviewed the December transcript and thought that those
4 issues were for part of this hearing, but I've concluded they
5 aren't. So I don't think people should be closed out by not
6 having raised them. You don't have to repeat them, because
7 you've already done it, those who have done, but I don't think
8 people should be closed out for not having raised them because
9 it wasn't part of this hearing. I've already ruled that.

10 MS. GRUBIN: Well, Your Honor, perhaps people should
11 not be foreclosed for filing affidavits subsequent to today.

12 THE COURT: That's what I just said.

13 MS. GRUBIN: I wanted to make it clear, Your Honor.

14 THE COURT: You said it more clearly. You said it
15 more clearly.

16 UNIDENTIFIED SPEAKER: And, Your Honor, I apologize
17 because I think I'll be repeating you too, but the vehicle to
18 make this happen will be a motion that must be brought by the
19 debtor.

20 THE COURT: Is part two of the objection -- I'm sorry.
21 Part two of the objection to the Rule 15 motion.

22 UNIDENTIFIED SPEAKER: Part two to the objection to
23 the Rule 15 motion.

24 THE COURT: Yes. Yes. And you ought to wait to see
25 what complaints survive and then you can file your objection.